

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #3	CCRB Case #: 202003920	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/04/2020 8:30 PM	Location of Incident: Central Park West and 108th Street	Precinct: 24	18 Mo. SOL 12/4/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 06/05/2020 10:26 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 06/05/2020 10:26 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Dennis Saucedo	28946	951216	PSA 6
2. INS Steven Ortiz	00000	902895	PBMN
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DC Russell Green	00000	917716	PBMN
2. LT Michael Disanto	00000	945669	026 PCT
3. DI Danielle Raia	00000	924370	AUX P.S

Officer(s)	Allegation	Investigator Recommendation
A.INS Steven Ortiz	Abuse: Inspector Steven Ortiz detained § 87(2)(b)	
B. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 5, 2020, reporting non-witness § 87(2)(b) filed this complaint via the CCRB's call processing system on behalf of § 87(2)(b) after seeing video of the incident on Twitter. This is a sensitive case that received substantial media and social media coverage.

On June 4, 2020, at approximately 8:30 PM, § 87(2)(b) who works as a delivery person for food delivery service Caviar, was riding his bicycle south on Central Park West in Manhattan. A Black Lives Matter protest march was taking place at the location at the time. At 108th Street and Central Park West, § 87(2)(b) stopped his bicycle to yell at officers, including Inspector Steven Ortiz of Patrol Borough Manhattan North, who were arresting a woman, identified by the investigation as § 87(2)(b). § 87(2)(b) began riding his bicycle away, after which Ins. Ortiz instructed officers, including Deputy Inspector Danielle Raia of Patrol Borough Manhattan North, to arrest § 87(2)(b) (**Allegation A, Abuse of Authority:** § 87(2)(g)). As officers arrested § 87(2)(b) an unidentified female officer allegedly told § 87(2)(b) "Shut the fuck up," (**Allegation B, Discourtesy:** § 87(2)(g)). Officers took § 87(2)(b) to the 24th Precinct stationhouse, where PO Dennis Saucedo released him with a voided arrest and no summons. § 87(4-b), § 87(2)(g)

The investigation did not recover BWC footage of this incident as requests for BWC footage returned negative results. The investigation obtained three videos of parts of the incident from Twitter which began after § 87(2)(b)'s arrest was initiated and showed him being escorted to a police vehicle [BR 01, 02, 03]. The investigation obtained external surveillance footage from a nearby building that did not depict the relevant parts of this incident [BR 35].

Findings and Recommendations

Allegation (A) Abuse of Authority: Inspector Steven Ortiz detained § 87(2)(b)

It is undisputed that a citywide 8:00 PM curfew was in effect on the date of the incident and that essential workers were exempt from the curfew. It is undisputed that § 87(2)(b) stopped his bicycle and yelled at officers who were effecting an arrest at 110th Street and Central Park West. It is also undisputed that § 87(2)(b) had begun riding his bicycle away from the location when Ins. Ortiz instructed officers, including DI Raia, to stop and arrest § 87(2)(b) and that § 87(2)(b) was taken to the 24th Precinct stationhouse.

§ 87(2)(b) testified that he had just completed a food delivery at 110th Street on the east side in Manhattan and rode his bicycle west on 110th Street before turning left onto Central Park West to return to the restaurants he was delivering for on 86th Street [BR 04]. § 87(2)(b) was working for the § 87(2)(b) and was on a Face Time call with his girlfriend § 87(2)(b) at the time. § 87(2)(b) saw protestors gathered at 110th Street and Central Park West and saw that a group of officers was arresting a female jogger, identified by the investigation as § 87(2)(b) whom § 87(2)(b) had seen earlier in the day. § 87(2)(b) stopped his bicycle approximately six to seven feet away from § 87(2)(b) but did not get off it. He yelled to the officers that § 87(2)(b) had not done anything wrong. The officers told § 87(2)(b) to leave the scene, and he complied, beginning to ride away on his bicycle.

Among the officers arresting § 87(2)(b) was Ins. Ortiz, whose testimony was consistent with that of § 87(2)(b) although Ins. Ortiz testified that § 87(2)(b) stood approximately an arm's length away from the officers [BR 10]. Ins. Ortiz further testified that § 87(2)(b) was loud, creating a scene, and causing public alarm, although he did not recall what § 87(2)(b) was saying. Ins. Ortiz noted that there was a lot of noise from arrestees in the area but that § 87(2)(b)'s yelling stood out because he was close to Ins. Ortiz and distracting him from effecting the woman's arrest. No other individuals engaged in the same behavior to the extent that § 87(2)(b) did. Ins. Ortiz did not recall whether § 87(2)(b) was doing anything with his body at the time or coming any closer to Ins. Ortiz.

Ins. Ortiz instructed § 87(2)(b) to disperse several times, but § 87(2)(b) continued to yell loudly in the area. § 87(2)(b) had a large orange box on the back of his bicycle which had “§ 87(2)(b)” written on it. Ins. Ortiz did not know what § 87(2)(b) was at the time and did not consider what it was [BR 10].

Both § 87(2)(b) and Ins. Ortiz testified that § 87(2)(b) ultimately got on his bicycle and began to leave the scene, heading south on Central Park West [BR 04, 10]. Ins. Ortiz added that § 87(2)(b) continued to yell while riding his bicycle. Ins. Ortiz decided to arrest § 87(2)(b) for violating the citywide curfew and for disorderly conduct due to his behavior while interfering with the arrest and failing to disperse. Ins. Ortiz instructed group of supervising officers, including DI Raia, to apprehend § 87(2)(b). Ins. Ortiz did not recall whether he had any conversation with the officers arresting § 87(2)(b) including whether he reported his observations of § 87(2)(b). Ins. Ortiz did not recall how he informed the officers that § 87(2)(b) was to be charged with the curfew violation as well as disorderly conduct but believed that he had done so at some point. Ins. Ortiz noted that it was understood by all officers at the time that individuals were being arrested for violating the curfew, but he did not recall how it was conveyed that § 87(2)(b) would also be charged with disorderly conduct.

DI Raia testified that she did not recall the details of § 87(2)(b)'s arrest and that her attention was drawn to him only after officers had already begun to gather around him [BR 08]. DI Raia was not aware of why § 87(2)(b) was being arrested at the time but assumed it was due to a curfew violation.

Deputy Chief Russel Green of Patrol Borough Manhattan North was supervising officers at protests nearby when he was informed that protesters had remained at the location and determined that his presence was needed there [BR 09]. After consulting the NYPD Legal Bureau, DC Green issued the instruction to officers to begin arresting protestors remaining at the location. DC Green testified that he was at the location near the time of the incident but that he did not see § 87(2)(b) there nor did he witness § 87(2)(b)'s arrest. DC Green was unsure of whether he was still on scene when § 87(2)(b) was arrested or if he had already returned to the 24th Precinct stationhouse. DC Green was made aware of the incident when Chief Lori Pollock of the Collaborative Policing Unit contacted him and asked him about the incident after seeing the videos on Twitter. DC Green contacted the officers involved and, including Ins. Ortiz, who informed DC Green of what happened after the fact. Ins. Ortiz told DC Green that he had instructed § 87(2)(b) to leave the scene, but that § 87(2)(b) refused and became louder, after which Ins. Ortiz decided to detain him.

DC Green wrote an email to Chief Pollock detailing what he had learned about the incident in the context of his own experience at the location [BR 32]. In the email, DC Green clarified that at 8:00 PM, 30 protestors were still at the location. Officers instructed the individuals to go home, but approximately 10 remained and continued to chant and use profanity towards officers. DC Green then provided an account of § 87(2)(b)'s arrest based on his conversation with Ins. Ortiz, who stated that, while the ten individuals were being arrested, § 87(2)(b) was recording video of the scene and shouted at officers. Ins. Ortiz instructed § 87(2)(b) to disperse, but § 87(2)(b) refused, and Ins. Ortiz decided to arrest him. The email also states that § 87(2)(b) was not working as a delivery person at the time of the incident.

PO Dennis Saucedo of PSA 6 was on a detail regarding the protest and had walked with protestors from 81st Street. PO Saucedo testified that he saw § 87(2)(b) for the first time when he heard noise that drew his attention to officers who were already in the process of arresting § 87(2)(b) [BR 11]. PO Saucedo was focused on his own arrest that was happening simultaneously and did not participate in the arrest. However, PO Saucedo's arrestee and § 87(2)(b) were transported to the 24th Precinct in the same van, and PO Saucedo processed § 87(2)(b)'s arrest because he was the officer nearest by when § 87(2)(b) was arrested. PO Saucedo was not given any instructions regarding who would be § 87(2)(b)'s arresting officer, but he noted that since he was nearby when § 87(2)(b) was arrested, he was the arresting officer. No supervisors informed PO Saucedo that § 87(2)(b) was going to be charged with disorderly conduct. A sergeant at the 24th Precinct stationhouse instructed officers to issue summonses to protestors for violating the curfew. PO Saucedo investigated § 87(2)(b)'s

claims that he was an essential worker by looking at the message on the Caviar application on § 87(2)(b)'s cell phone, which was a notice regarding delivery persons being considered essential workers and thus exempt from the curfew. PO Saucedo did not know what Caviar was at the time but believed that the notice on § 87(2)(b)'s phone was sufficient proof of him being an essential worker. After reporting his findings to a supervisor, identified by the investigation as DI Naoki Yaguchi of the 24th Precinct, PO Saucedo generated a voided arrest to document that § 87(2)(b) was taken into custody and released § 87(2)(b) without an arrest or summons. PO Saucedo was not instructed to charge § 87(2)(b) with disorderly conduct or issue him a summons for disorderly conduct. At the time of his CCRB interview, PO Saucedo provided photos he had taken of the notice on § 87(2)(b)'s phone as well as a page from the § 87(2)(b) application showing that § 87(2)(b) had made no earnings on the application on the day of the incident [BR 25].

Civilian witnesses § 87(2)(b) and § 87(2)(b) posted video on Twitter of § 87(2)(b)'s arrest and provided telephone statements to the CCRB. § 87(2)(b) also posted video on Twitter of § 87(2)(b) being placed inside a police van and gave a telephone statement to the CCRB. However, all civilian witnesses stated that they only became aware of § 87(2)(b)'s arrest after it had been initiated and did not see § 87(2)(b)'s behavior prior to his being stopped nor did they see or hear him have any interactions with officers before he was stopped [BR 05, 06, 23]. The CCRB attempted to contact § 87(2)(b) who remained unavailable [BR 34]. § 87(2)(b) who was the victim in CCRB case 202004532, stated in a phone statement that she did not hear § 87(2)(b) arguing with officers as she was being arrested.

The videos that all three witnesses posted to Twitter begin after officers have already initiated § 87(2)(b)'s arrest and do not show the events leading up to it (IA 35-37) [BR 01, 02, 03]. In § 87(2)(b) and § 87(2)(b)'s videos, approximately six supervisors in white shirts, including Ins. Ortiz and DI Raia, are seen observing as a female officer in a standard blue uniform handcuff § 87(2)(b) (IA 35, 36, beginning at 0:00 minutes) [BR 01, 02]. DC Green and PO Saucedo are not seen in the videos. Both § 87(2)(b) and § 87(2)(b)'s videos contain audio of § 87(2)(b) yelling at officers, "Are you serious? It says on the app that I can show you something," [BR 01, 02]. In the video, § 87(2)(b) appears to be wearing a black t-shirt and black jeans and a rectangular orange backpack often worn by food delivery persons. Several individuals are seen observing § 87(2)(b)'s arrest, although none of the officers interact with the bystanders. The investigation obtained external building surveillance video which did not capture § 87(2)(b)'s arrest or the events leading up to it [BR 35].

PO Saucedo prepared a voided arrest report to document § 87(2)(b)'s detainment. § 87(2)(b) was charged only with violation of a local law [BR 33]. There is no charge for disorderly conduct listed on the arrest report. The arrest report notes that § 87(2)(b) was present on scene when a group of people was arrested for violating the New York City Mayor's curfew order. The report also states that § 87(2)(b) was ordered to leave the scene but refused and was subsequently taken into custody. Upon further investigation, PO Saucedo determined that § 87(2)(b) was an essential worker working for a food delivery company, and he was released without a summons. PO Saucedo also took photos of § 87(2)(b)'s identification card and a notice on the Caviar application on his phone noting that food delivery persons are exempt from the curfew [BR 25]. PO Saucedo also took a photo of the Caviar application screen noting that § 87(2)(b) had made no earnings on the incident date.

According to the version of NYPD Patrol Guide Procedure 212-11 in effect at the time of the incident, a Level 3 Terry Stop requires reasonable suspicion, which exists when "the information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believe criminal activity is at hand," and requires articulate specific facts establishing justification for the stop [BR 13].

The Office of the New York City Mayor released Emergency Executive Order No. 118 on June 1, 2020 mandating the 8:00 PM curfew [BR 14]. New York City Mayor's Emergency Executive Order No. 119, issued on June 3, 2020, extended the curfew order until June 8, 2020 [BR 15]. Both orders note that essential workers traveling to or from or in performance of their duties are exempt

from the curfew. A Frequently Asked Questions document issued by the Office of the Counsel to the Mayor specifies that food delivery workers are considered essential under Empire State Development Corporation guidelines [BR 16, 17]. NYPD Finest message #37646623 disseminated guidelines regarding the emergency executive orders to officers and noted that officers who observe an individual violating the curfew may issue a criminal summons to the individual for violating New York City Administrative Code §3-108 [BR 18]. This section in the Administrative Code states that violations of any administrative procedure issued by the Office of the Mayor shall be considered a class B misdemeanor punishable by fine and/or imprisonment [BR 19].

New York State Penal Law §240.20 regarding states that a person is guilty of disorderly conduct when, with the intent to cause public inconvenience, annoyance, or alarm, the individual does any of the following: engages in violent, tumultuous or threatening behavior; makes unreasonable noise; uses abusive or obscene language or makes an obscene gesture in a public place; disturbs any lawful assembly or meeting of persons; obstructs vehicular or pedestrian traffic; congregates with other persons in a public place and refuses to comply with police's lawful order to disperse; or creates a hazardous or physically offensive condition by any act which serves no legitimate purpose [BR 20].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that during his arrest, a female officer told him to “shut the fuck up”

approximately two to three times because he was still yelling [BR 04]. § 87(2)(b) did not see the officer who made the statement but noted that the voice sounded like that of an older female.

In the videos that § 87(2)(b) and § 87(2)(b) posted on Twitter, two female officers are seen among those interacting with § 87(2)(b) [BR 01, 02]. DI Raia identified herself as the female officer in the uniform with the white shirt in both § 87(2)(b) Twitter video (IA 35, beginning at 0:05 seconds) and § 87(2)(b)'s Twitter video (IA 36, beginning at 0:03 seconds) [BR 01, 02]. A female officer in a standard blue uniform is seen placing zip ties on § 87(2)(b). The officer is visible in both § 87(2)(b)'s video (IA 35, beginning at 0:05 seconds) and § 87(2)(b)'s video (IA 36, beginning at 0:01 seconds) [BR 01, 02]. The officer in both § 87(2)(b) and § 87(2)(b)'s Twitter videos appears to be a white or white Hispanic female who appears to be a similar height to § 87(2)(b) who is 5'7" tall, and the other officers on scene. Neither of the videos captures audio any officers telling § 87(2)(b) to "shut the fuck up." The investigation obtained external building surveillance video which did not capture § 87(2)(b)'s arrest and did not have audio [BR 35].

DI Raia testified that she told § 87(2)(b) to calm down several times during his arrest but denied telling him to "shut the fuck up" or using any profanity while speaking to him [BR 08].

Ins. Ortiz, DC Green, and PO Saucedo all testified that they did not hear any officers tell § 87(2)(b) to "shut the fuck up" or use any profanity towards § 87(2)(b) during his arrest [BR 09, 10, 11]. None of the interviewed officers were able to identify the female officer wearing the blue uniform in the Twitter videos [BR 08, 09, 10, 11, 28].

§ 87(2)(b) stated that he heard an unidentified officer tell § 87(2)(b) to "shut up," although he did not recall whether any officers told § 87(2)(b) to "shut the fuck up" or used any other profanity during the incident [BR 05]. § 87(2)(b) stated that the female officer in the blue uniform who participated in § 87(2)(b)'s arrest was approximately in her 30s [BR 12]. § 87(2)(b) stated that she heard a male officer say, "Shut the fuck up," but given that § 87(2)(b) testified that the officer was female, the investigation is not crediting § 87(2)(b)'s statement [BR 23]. § 87(2)(b) did not witness § 87(2)(b)'s arrest [BR 06].

DI Raia's NYPD MOS photo notes that she was § 87(2)(b) old at the time of the incident BR 24].

The only detail rosters generated for the area on the incident date listed officers from PSA 6. The only female officers listed were PO Brianne Modeste, PO Samantha Ramos, and PO Chantel Hook. According to the CCRB CTS database, PO Modeste is a § 87(2)(b)-old black female and PO Hook is a § 87(2)(b)-old black female. PO Ramos is a § 87(2)(b)-old Hispanic female. Given that PO Modeste and PO Hook did not match the description of the officer seen in the video or § 87(2)(b)'s description, the investigation only interviewed PO Ramos.

PO Ramos testified that she was assigned to a detail at 125th Street and Lenox Avenue in Manhattan until approximately 6:00 PM on the incident date, after which she and several other officers were assigned to a post at a NYCHA development within PSA 5. PO Ramos did not respond to 108th Street and Central Park West at any point during her tour and did not witness or assist with § 87(2)(b)'s arrest. PO Ramos denied telling § 87(2)(b) to "shut the fuck up" during his arrest and did not hear any other officers do so.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB case to which § 87(2)(b) has been a party [BR 31].
- Ins. Ortiz has been a member of service for 28 years and has been a subject in one other CCRB case with one allegation, which was not substantiated.
- PO Saucedo has been a member of service for nine years and has been a subject of one other CCRB case with one allegation, which was not substantiated.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York regarding this incident on an unknown date [BR 29]. § 87(2)(b) and counsel were seeking \$10 million in redress for “emotional and mental distress, physical pain and suffering, humiliation, embarrassment, indignity and the loss of liberty and civil rights.” As per the Office of the New York City Comptroller, a 50-H hearing was held regarding the incident on § 87(2)(b) [BR 36].
- According to the New York State Office of Court Administration, § 87(2)(b) has no criminal convictions in New York City [BR 30].

Squad No.: 3

Investigator: Magdalena Azmitia Investigator Magdalena Azmitia December 17, 2020
Signature Print Title & Name Date

Squad Leader: Olga Golub SL Olga Golub 12/17/2020
Signature Print Title & Name Date

CCRB Case # 202003920

Reviewer:

Signature

Print Title & Name

Date